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Epistocracy for Online Deliberative Bioethics

GIUSEPPE SCHIAVONE, MATTEO MAMELI, and GIOVANNI BONIOLO

Abstract: The suggestion that deliberative democratic approaches would suit the management of bioethical policymaking in democratic pluralistic societies has triggered what has been called the “deliberative turn” in health policy and bioethics. Most of the empirical work in this area has focused on the allocation of healthcare resources and priority setting at the local or national level. The variety of the more or less articulated theoretical efforts behind such initiatives is remarkable and has been accompanied, to date, by an overall lack of method specificity. We propose a set of methodological requirements for online deliberative procedures for bioethics. We provide a theoretical motivation for these requirements. In particular, we discuss and adapt an “epistocratic” proposal and argue that, regardless of its merits as a general political theory, a more refined version of its normative claims can generate a useful framework for the design of bioethical forums that combine maximal inclusiveness with informed and reasonable deliberation.

Keywords: bioethics; deliberative democracy; participation; epistocracy

Introduction

The so-called deliberative turn in health policy and bioethics has been characterized as lacking in method specificity.^[1] Disputes regarding institutional design for bioethical forums essentially concern competing political theories for the handling of moral disagreement. It is sensible, therefore, to take a genuinely politico-philosophical stance as to what the institutions that deal with moral disagreement ought to look like. In fact, any attempt at designing a public forum for the discussion of health policies and bioethical issues can be said to embed the features of the political theory its proponents endorse. It is therefore essential, for both practical and theoretical reasons, to lay out in detail the methodological requirements for carrying out deliberative attempts, and to be explicit about the normative claims that lie behind these requirements.

In this contribution, starting from an analysis of a recent defense of epistocracy—that is, the form of government in which the rulers are those who know the most^[2]—and of its shortcomings, we argue that, although problematic as a general political theory, if restricted in scope to specific ethical issues arising in the domain of the life sciences, some epistocratic constraints might be useful. Taking into account specific methodological considerations,^[3] we show how soft epistocratic constraints can be reconciled with deliberative participatory democracy in the case of policymaking in bioethics. We do this by advancing some suggestions on how to design participatory online forums for public decisions on bioethical issues.^[4]

Brennan's Epistocracy

Jason Brennan has recently argued in favor of an alleged right to a competent electorate.^[5] His point, at least apparently, is not that incompetent voters will simply harm other people and hence ought to be disenfranchised. Rather, just like juries, electorates *lack* authority and legitimacy whenever they decide incompetently or on the basis of morally unreasonable claims and not necessarily because their decisions are incorrect or harmful. Incompetent voting is unjust in that citizens have a basic right not to be deprived “of life, liberty or property ... as a result of decisions made by an incompetent or morally unreasonable deliberative body.” Brennan calls this the *competence principle*.^[6] He suggests screening out incompetent voters using written voter exams.

Brennan defends his claims from two main objections put forth by Estlund against previous versions of epistocracy.^[7] He argues that the first objection does not apply to his form of epistocracy, whereas the second one is not decisive. Estlund's first objection attacks the *authority tenet*, which justifies giving more power over others to those who know more. The authority tenet should be rejected—so the objection goes—in that it commits the expert/boss fallacy, which amounts to unduly assuming that being an expert is sufficient grounds for someone to hold power over others. However, Brennan argues that his case for epistocracy relies not on the authority tenet but, rather, on a negative version of it, which he calls the *antiauthority tenet*. This asserts that moral unreasonableness and ignorance are sufficient reasons to justify *not granting* someone political authority over others.

Yet, Brennan admits, his argument is vulnerable to a second kind of (he claims non-decisive) objection. Epistocratically restricted suffrage can be said to violate what Estlund calls the *qualified acceptability requirement*. Widely shared in liberal political philosophy, the principle states that “no one has authority or legitimate coercive power over another without a justification that could be accepted by all qualified points of view.”^[8] The procedure that embodies the debatable justification for distributing political power is, in Brennan's case, the written test that he suggests ought to be used in order to prevent morally unreasonable and ignorant people from participating. A polity could agree that there is a difference between competent and incompetent people; nonetheless, it might not be possible to find an agreement among reasonable people as to the proper means to track the distinction between competence and incompetence. Hence, epistocracy is unjust insofar as the test for competence is qualifiedly objectionable. However, given that a choice must be made, Brennan argues, one cannot but opt for the lesser injustice between (1) the enforcement of policies picked by an incompetent deliberative body and (2) the enforcement of a specific way, not universally accepted, to track the distinction between competence and incompetence. He argues for the second option in two ways:

1. Democracy with universal suffrage violates the competence principle. Epistocracy violates the qualified acceptability requirement. The former violation is inherently worse than the latter, as shown by the fact that we promptly accept voting age laws, which already are a form of weak epistocracy. We ought to accept, then, other—namely, better—forms of epistocracy.

2. Epistocratic policies are likely to be “better able to achieve prosperity and various humanitarian goals.”^[9]

Regarding the first point, we notice that Brennan fails to effectively support the claim that his epistocratic proposal is morally preferable to democracy with voting age laws. Even if it is conceded that the justification for this institution is epistocratic, one can argue that the institution is better able to satisfy the qualified acceptability requirement and is thus less morally troublesome than Brennan’s voting licenses. This is the case because every voter, at some point in his or her life, has been underage, thereby making this threshold for political participation more likely to be acceptable to every qualified point of view. After all, “age groups do not age, but birth cohorts do.”^[10] Recognizing a threshold that makes reference to age groups—as voting age laws do—is thus a measure that does not favor any distinct group of people and should therefore be seen as *prima facie* acceptable. With Brennan’s epistocratic test, there is a possibility that some individuals will never be able to pass voter exams.

Regarding the second point, we notice that its truth depends on empirical evidence, and currently no evidence supports the claim that epistocratic institutions produce better policies. A rich literature is developing concerning the output that more inclusive institutions tend to have on the governance of local and regional administrations.^[11,12,13] We are not aware of even small-scale experiments that try and build a case for epistocratic institutions. Moreover, grounding the assessment of epistocracy in the goodness of the policies it would yield seems to deliberately overlook the distinction between the instrumental and the procedural value of political institutions.^[14] Such a distinction is crucial for Brennan’s own uncoupling of the legitimacy and the correctness of decisions.

Despite these considerations, the idea that only those who are not ignorant and unreasonable can legitimately participate in certain kinds of policymaking is a plausible one. In particular, it is plausible in the context of policymaking on bioethical issues, in which the ignorance and the unreasonableness of those who participate in the decision-making can certainly result in illegitimate and otherwise undesirable outcomes. Whereas the main goal of political participation within representative democracies à la Schumpeter^[15] can be roughly reduced to the mere selection of a leader (and his or her underlying political platform) under conditions of free competition, republican democratic governance seems to entail a multifaceted array of modes of participation that extend well beyond the selection of some ruling leader or elite. Brennan’s tests seem to act as constraints on the former kind of participation, whereas the kind of constraints we envisage are instead conceived of as applying to issue-specific participatory forums that clearly appeal to the latter (republican) democratic framework and should be seen as an attempt at broadening the scope of participation in democracy. Constraints on the first sort of participation look unpromising for at least one set of reasons: the selection of a leader depends in a very indirect way on the identification of his or her political platform. The relation that links a candidate’s political platform to the actual implementation, once elected, of policies based on that platform is in turn even more tortuous. In this context it is hard to think of sensible criteria to pin down what constitutes the relevant knowledge to be possessed in order to cast a reasonable and competent vote. On the one hand, this means that voters exercise (whether competently or not) very indirectly a fairly little amount of power over others, and therefore the demand that they do so competently

seems to put the burden of proof on those who claim that this power will result in some harm to others. On the other hand, deciding whether one does exercise his or her negligible power competently (whether in harmful ways or not) is indeed very likely to lead to controversy. In contrast, direct participation in issue-specific deliberative forums can, when such forums are endowed with recommending powers, exercise precisely the kind of authority over others that demands that the competence principle be held in due consideration.^[16]

Thus, in the context of designing procedures for bioethical policymaking that are as democratic, participatory, and inclusive as possible, considering the introduction of epistocratic constraints seems useful, though much depends, as we will see in the subsequent discussion, on exactly what kinds of epistocratic constraints are implemented.

The Shortcomings of Voter Exams

Brennan claims that “a written voter exam is not the only way to attempt to enforce the competence principle. I can think of other ways, but most of them are either prohibitively costly or unrealistic.”^[17] He proposes written general exams aimed at testing for politico-economic knowledge and moral reasonableness. These would be tests that citizens need to pass only once, in order to be granted a lifelong voting license.

There are various problems with this proposal. One issue concerns whether only politico-economic knowledge would be an essential part of a responsible citizen’s knowledge. It is unclear, for instance, why some basic understanding of science ought not to be a condition for the responsible exercise of political rights, especially in societies in which science and technology play an important role. Another issue concerns the requirement that people be morally reasonable, which, given how controversial the notion of moral reasonableness is, seems too difficult to test in any sensible way. A further issue concerns the lifelong nature of the licenses granted according to Brennan’s proposal. Both political economy and morality are progressive endeavors frequently undergoing changes within the span of an individual’s lifetime. The belief that racial segregation is legitimate would probably not feature as a trait associated with moral unreasonableness in the 1920s in the Southern states of the United States, whereas it clearly would now.^[18] The only way to remedy this would be to have periodic exams. But this would make the procedure much more costly and organizationally cumbersome.

Given these theoretical and practical shortcomings, which are central to the very legitimacy and workability of epistocracy, we propose instead ways of testing the competence relevant with specific and particular deliberative issues rather than with the competence that, according to Brennan, is required for the general exercise of one’s voting rights.

Online Epistocratic Participation for Deliberative Bioethics

In policymaking regarding bioethical issues, epistocratic constraints on participation

seem morally desirable. Though in this contribution we are focusing specifically on bioethical issues, the same seems to apply to policymaking for the governance of most techno-scientifically complex issues. These are areas in which it is hard to see how decisions could be legitimate when made by deliberators who do not know enough about the matters deliberated on. On the one hand, non-experts do not have the relevant kind of knowledge to produce legitimate decisions. On the other hand, it would be wrong to leave the decisions about bioethical and more generally techno-scientific issues to the experts, partly because the experts might be unreliable—for a variety of reasons—at tracking the interests of the non-experts and partly because the non-experts have a non-instrumental interest in participating directly in decisions about bioethical and techno-scientific issues that affect them. Paradoxically perhaps, soft epistocratic constraints like those suggested subsequently might be a way of making participation in the decision-making as inclusive as possible while at the same time ensuring that the outcomes of the deliberation are legitimate.

One specific reason why Brennan's proposal is highly problematic is that his test affects political rights across the board. Tests that apply to specific moments of political participation are likely to be less problematic, in that they do not involve a generic disenfranchisement of incompetent voters but rather deploy the reasonable requirement that the legitimacy of recommending decisions that concern extremely complex scientific issues ought to depend on whether the decision is made as inclusively *and* as competently as possible. Issue-specific restrictions to participation in online deliberative forums designed to deal with bioethical issues might provide a good example of how good epistocratic solutions can be reconciled with inclusiveness and provision of opportunities for participation.

A number of contemporary political philosophers have articulated a wide range of deliberative approaches to democracy.^[19, 20, 21, 22, 23] Despite the differences, all these approaches share a broad conception of deliberative democracy that relies on two main kernels: (1) the democratic kernel, according to which decisions affecting people's lives ought to be made, in general and when possible, by those affected people themselves, and (2) the deliberative kernel, according to which collective decision-making ought to be the result of argument and the use of public reason by free and equal citizens.^[24]

Public bioethics essentially concerns the pursuit of collectively binding decisions that are legitimate in the face of moral disagreement. Thus, if politics is the means by which people's views inform the way they are governed, then public bioethics is a political endeavor throughout.^[25] Institutions meant to deal with bioethics can therefore be designed according to different political theories. Gutmann and Thompson suggest that the political theory that would best suit bioethical debates might be one that asks "citizens and officials to justify any demands for collective action by giving reasons that can be accepted by those who are bound by the action."^[26] Such is a deliberative approach to bioethics. It has four main purposes: (1) to promote the legitimacy of collective decisions; (2) to encourage public-spiritedness in public decision-making; (3) to foster an economy of moral disagreement, encouraging the use of moral rationales for collectively binding decisions that would minimize the rejection of opposing positions; and (4) to help correct mistakes due to partial understanding.

The enforcement of laws or policies touching on morally sensitive spots demands both that people who are constrained by those laws have a say in their making and, importantly, that people who participate by presenting their arguments do so competently precisely in order for the resulting decision to be qualifiedly acceptable. This suggests that, within the domain of bioethics, the competence principle ought to have some priority over the qualified acceptability requirement. Such a priority, restricted in scope to the political management of bioethical issues, does not share the problematic aspect of Brennan's suggestion: in fact, subjecting participation in bioethical public forums to epistocratic constraints, in contrast with Brennan's proposal, entails no disenfranchisement of rights to political participation.^[27] Citizens retain their political status regardless of their competence in, say, stem cell research, and they will therefore retain their right to contest the very legitimacy of the competence test deployed. Furthermore, citizens' ability to contribute competently to public forums for bioethics, given their proper motivation, is encouraged by the kind of pedagogical setting outlined subsequently.

It is worth noting here that, even though we list a series of procedural constraints on the contributions that citizens might make to policymaking in bioethics, the main purpose of our methodological proposal is that of *increasing* the inclusiveness of deliberation in bioethics rather than that of generating barriers to participation. Ours is an attempt to provide citizens with the proper means for considered judgment and thereby with the means for legitimate active participation.^[28] This implies that the epistocratic tools ought to be used *cum grano salis*, namely, by complementing their availability with proper efforts to contain the risk of exclusion of those sections of the population that do not master (for reasons that might be morally neutral) the science and the ethics relevant for proper deliberation about specific bioethical issues. This can be done, for instance, by keeping the forum open but selectively recruiting,^[29] that is, encouraging the outreach of public forums targeting those populational subsets whose low civic engagement decreases the legitimacy of morally controversial, collectively binding decisions.

A number of attempts at deliberative bioethics prompted by such theoretical considerations have already been made. Essentially, bioethical forums can lie along a continuum that goes from blunt technocracy to grassroots participation. At the former end of the continuum, power is granted directly to experts, picked through more or less public and more or less reasonable procedures. At the latter end, institutions are meant to be as inclusive and as open as possible. Democratic deliberative efforts such as the initiatives promoted by the Human Fertilisation and Embryology Authority (HFEA; instituted in 1990 with the purpose of overseeing and regulating the use of gametes and embryos in research and clinical/medical practice) try to be as inclusive as possible without sacrificing the considered argumentative nature proper of deliberation. In order to strike this balance, articulate public consultations that resort to methods ranging from standard opinion polls to public conferences to deliberative workshops are organized.^[30]

These kinds of workshops usually host no more than 100 people and go on over a long period of time, hence demanding a series of encounters meant to lay out the facts and outline and openly discuss the arguments. Considered judgment requires, indeed, time and a definite effort of moderation and encouragement on the part of the hosting institution. If scaled up to the entire population, face-to-face deliberative workshops

are very unlikely to be an efficient way of implementing epistocratic constraints on political participation. Online participatory and deliberative tools provide an alternative worth exploring. Hosting the deliberation online might allow for a number of advantages, for example, cost containment, longer availability of the forum, ubiquitous accessibility, and so on. Indeed, parts of the consultations led by the HFEA, for instance, were hosted online. This solution was, however, implemented without any mechanism confirming that participants had actually gone through the information material or that they were familiar with the relevant issues. Moreover, the online participatory process did not allow participants to present their own reasons and arguments and to discuss the reasons and arguments of others, which is crucial for the deliberative kernel.

The alternative online participatory process we propose is structured as follows:

1. In a preliminary phase, citizens are asked to set the agenda of the deliberative process, selecting issues they feel demand public deliberation. These issues are then translated into specific yes/no questions whose formulation is tested for impartiality and perspicuity by participants in a given span of time prior to the deliberation.
2. Following insights drawn from experiences falling within James Fishkin's deliberative polling scholarship,^[31] the participants to the deliberative process are asked to provide their intuitive and unreasoned answer to the deliberative question in order for the transformative potential of deliberation to be gauged quantitatively. Somewhat differently from Fishkin's approach, though, we propose to complement the measurement of the shift in preferences with a genuinely deliberative effort that does not rely merely on the aggregation of individual preferences subsequent to the information and discussion phases described subsequently.
3. The participants are individually exposed to the relevant scientific information. Again, differently from deliberative efforts that rely on information provision, this participatory process provides information via a two-way instrument. This allows for the contestation and reformulation of specific portions of the information provided (in a fashion similar to that of Wikipedia entries). Participants are tested on their knowledge of basic (theoretically uncontroversial) facts contained in (or implied by) the information materials. Those who fail the test are not allowed to proceed to the next phase. These participants receive feedback, and they can restart this phase of the deliberative process if they wish.
4. The participants are individually exposed to the known repertoire of relevant moral arguments concerning the deliberative issue in question. They are then required to object to a selection of arguments supporting their answer to the deliberative questions and to provide some arguments in defense of their view. This is meant to foster the understanding of people with different perspectives, hence discouraging and counteracting the ideological opposition that sometimes characterizes this kind of confrontation. The arguments and counterarguments produced by participants are tested for logical consistency and rhetorical correctness. Those participants who provide very poor

arguments (meaning arguments that are either logically inconsistent or rely on premises whose terms are not acceptable, at least in principle, to those who are committed to finding fair terms of cooperation) in defense of their view or against views they dislike are not allowed to proceed to the next phase. These participants receive feedback and can restart this phase of the deliberative process if they wish.

5. The participants are given access to an online asynchronous open forum in which they discuss their respective positions with one another. The process of discussion results in the draft of a deliberative document akin to the ones that bioethical committees generally produce. In case consensus among participants is not forthcoming, “dissenting opinions” can be noted and underwritten by participants.

The structure of the participatory process described is meant to embed the competence principle in the technological support, thus screening out ignorant and unreasonable participants. But the process is also maximally inclusive, partly because it allows participants to acquire the relevant competence and partly because it allows the participants to reenter the process in case they are unable to satisfy the requirements for proper participation at one point or another. The epistocratic constraints are soft constraints on participation. The aim is to combine two values singled out as central by influential theorists of democratic innovations^[32,33]—namely, considered judgment and inclusion. Proposals of this kind have a series of advantages over Brennan’s tests and face-to-face deliberative workshops. As compared to Brennan’s exams, (1) they provide properly motivated citizens with the actual chance to be competent and reasonable enough to participate in the deliberative process, giving them the means for a non-dominated and non-dominating choice;^[34] (2) because the process is issue specific, a quiz testing for a subset of basic knowledge considered uncontroversial is more likely to be found and agreed on; (3) general political rights are unaffected; (4) not granting lifetime licenses it is more likely to screen out people lacking relevant knowledge, and there is no risk of outdated information. As compared to face-to-face deliberative workshops, (1) this process significantly lowers costs and barriers for large-scale participation; (2) it allows for longer spans of time being allocated to constructing one’s informed participation; (3) it allows for easy handling of situations in which participants do not have the relevant competence to start with but are motivated to acquire it.

Conclusion

In the context of deliberative processes that aim to be as inclusive, democratic, and participatory as possible, especially when the issues discussed are bioethical, there is a need to make sure that ignorant and unreasonable participants are prevented from disrupting the deliberation. But, given the value and importance of participation, this idea needs to be applied very carefully, and in some contexts it may not be applicable at all. We argued that it is possible to apply soft epistocratic constraints on deliberative forums limited in scope, such as issue-specific online bioethical forums, and that this can be done in a way that is consistent with the tenets of deliberative democracy. In fact, we believe, procedures like those we have outlined are an extremely useful tool capable of allowing for both the maximization of civic

engagement and the moral legitimacy of the output of the deliberative process. Competent citizens would be empowered to influence the process itself in a way that can advance the interests of the participants and of the communities to whom they belong.

Notes

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[4]. The participatory methodology outlined in this contribution is being deployed in a pilot online consultation, which will provide useful empirical information for further developments (available at <http://bioeticadeliberativa.scienzainrete.it/> [last accessed 15 Dec 2014]).

[5]. See note 2, Brennan 2011.

[6]. See note 2, Brennan 2011, at 704.

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[8]. See note 7, Estlund 2009, at 33.

[9]. See note 2, Brennan 2011, at 717.

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- [16]. Most deliberative democrats do argue for some version of what is called “considered judgment,” but they generally trade this value off for inclusion in a way that, according to Brennan’s argument, might end up affecting the legitimacy of the decisions taken.
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- [27]. People may be disenfranchised of some rights as a result of decisions taken in public forums from which they are excluded. However, (1) the output of such forums does not directly acquire the status of a binding law, (2) the fact that a woman enjoys her right to political participation means that she can make use of democratically available contestatory institutions/practices, (3) the decision reached by the forum is up for grabs and revisable (clearly only insofar as the extent to which this revisability is exercised does not disrupt the intelligibility of a polity’s legal framework), and, most importantly, (4) the legitimate reasons why the recommendations have been made are made available to everyone who is affected by the decisions informed by the recommendations.
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